COURT'S ORDER WHETHER THE CASE IS OR IS NOT
APPROVED FOR REPORTING
[Chapter VIII, Rule 32(2) (b)]
Description of case

Criminal Appeal No. 317 of 2002 **decided on: 13th May, 2005**

Dhanpal Singh
S/o Shri Barte Singh
R/o Village Sursal
Patwari Circle Bhiri
Tehsil Ukhimath
Distt. Chamoli ……...Appellant

(In Jail)

Versus

Stat Uttaranchal …….Respondent

A.F.R. (Approved for Reporting)
Not approved for Reporting

Date 13.05.2005

(Hon. Mr. Justice Irshad Hussain)

(Hon. Mr. Justice Prafulla C. Pant)

Reserved

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Appeal No. 317 of 2002

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R/o Village Sursal
Patwari Circle Bhiri
Tehsil Ukhimath
Distt. Chamoli ……...Appellant

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Versus

State of Uttaranchal ……..Respondent

Shri R.P. Nautiyal, learned counsel for the Appellant.
Shri Nandan Arya, learned A.G.A., assisted by Shri M.A. Khan learned brief holder of the State.

Corum: Hon Mr. Justice Irshad Hussain
Hon Mr. Justice Prafulla C. Pant

Per: Hon'ble Prafulla C. Pant, J.

This Criminal Appeal, preferred under Section 374 (2) of Code of Criminal Procedure, 1973, (herein after for brevity Cr.P.C.), is directed against the judgment and order dated 30.11.2002, passed by the then learned Session Judge, Chamoli in Sessions Trial No. 29 of 2002, whereby appellant has been convicted under Section 302 of Indian Penal Code, 1860, (herein after for brevity I.P.C.), and sentenced to imprisonment of life and also to pay fine of Rs. 10,000/- in default of payment of which he is directed to undergo two months rigorous imprisonment.

2. We heard learned Counsel for the parties and perused the entire evidence on record.

3. In brief, the prosecution story is that on 05.04.2000, Barte Singh, father-in-law of Smt. Rekha Devi (deceased), informed Nayab Tehsildar, Ukhimath that deceased, life all, other days had gone to jungle to collect fodder for the cattles but when she did not return for quite sometime, appellant Dhanpal Singh (brother-in-law of deceased) went in search of her and found Smt. Rekha Devi hanging by a rope in Dhadwad Toke. On this, Barte Singh and his son appellant Dhanpal Singh made attempts to contact Patwari but he was on leave as such they informed the Nayab Tehsildar. On said information, next day i.e. on 06.04.2000, Patwari, Bhiri went to the spot and prepared inquest report (Exh. A-1) at about 9:00 A.M. (In Uttaranchal hills certain Patwaris are given police powers). He also prepared police form no. 13 (Exh. A-10), diagram of the dead body (Exh. A-11), letter to the Chief Medical Officer (Exh. A-12) and sample seal (Exh. A-13). The Patwari sent the dead body of Smt. Rekha Devi for autopsy.

4. On 07.04.2000 at 1:00 P.M., the autopsy was conducted by Dr. Mayank Upadyay (P.W.4). The said Medical Officer, after post-mortem examination, prepared the post-mortem report (Exh. A-3). The Medical Officer observed that the dead body was of average built 21 years female person. The body was 36 to 72 hours old n which rigor mortis was in the upper parts of the body but passed away from lower limbs. The eye were closed, face congested and dark red swollen. Mouth partially open, tongue swollen. Bleeding from nostrils and mouth present. Dr. Mayank Upadyay recorded following ante-mortem injuries in Exh. A-3:-

1. **Ligature mark present. It is transverse continuous 43cm x 1cm at larynx infront coming out to left side of neck. on section, tissues under the mark were ecchymosed.**
2. **An abrasion 5cm x 2cm in deep reddish colour present infront of right thigh at the junction of upper 1 / 3rd with lower 2 / 3rd.**
3. **An abrasion 4 cm x 2.5 cm deep reddish in colour present infront of right thigh at the junction of upper 2 / 3rd and lower 1 / 3rd.**
4. **Abrasion 3cm x 2cm present infront of the right knee.**
5. **Abrasion 2.5cm x 2cm present infront of left knee.**

On internal examination, nothing abnormal found in the membranes, skull or vertebrae. Spinal cord not opened. Larynx and trachea found congested. As to heart right chamber found full and left chamber empty. Nothing abnormal found in lungs. In the large intestine, faecal matter with gases found present. Liver found weighing 1200 gms, Kidney 250 gms. Uterus normal. In the opinion of Dr. Upadyay, the cuase of the death was asphyxia as a result of strangulation.

5. On 07.04.2000, Bachan Singh (P.W. 2), father of the deceased, prepared a written First Information Report (Exh. A-2) which was later submitted to the Patti Patwari, Bhiri, stating that his daughter Rekha Devi was married

to Suryapal Singh (D.W. 1), resident of village Bhiri, Tehsildar, Ukhimath, District Rudrapur. The deceased

was having good relations with her husband but she was ill-treated by Barte Singh, father-in-law of the deceased (co-accused acquitted by the trial court) as he used to engage her all the time in the work and she was not allowed to study further. The informant further alleged that the in-laws of the deceased used to doubt at her character. At the end of the F.I.R., it is alleged that on 05.04.2000, Rekha Devi had not committed suicide but was killed by conspiracy of Barte Singh (father-in-law of the deceased) and appellant Dhanpal Singh, brother-in-law of the deceased (Jeth). The Patti Patwari, Bhiri registered the crime under Section 302, I.P.C. against Barte Singh, father-in-law of the deceased and appellant Dhanpal Singh. He prepared check report (Exh. A-4) and made the necessary entry in the General Diary (copy of Extract A-5). He made arrest of the appellant on 16.04.2000, after the F.I.R. was lodged.

6. On 09.04.2000, chargesheet was submitted by the Investigation Officer, against the appellant Dhanpal Singh and Barte Singh for their trial regarding the offence allegedly committed by them, punishable under Section 498-A, 304-B, 201 I.P.C. Learned Magistrate registered the case and after giving necessary copies to the accused persons, committed the case to the court of Sessions. Learned Sessions Judge, Chamoli, after hearing the parties, framed the charge against both the accused regarding offences punishable under Section 498-A, 304-B and alternative charge was framed under Section 306 I.P.C. on 11.09.2000. Later on an additional charge under Section 302 read with Section 34 of I.P.C. was framed against both the accused persons, including the

appellant on 10.07.2000. The appellant as well as co-accused Barte Singh, denied the charges and claimed to

be tried. The prosecution got examined P.W. 1 Sampatti Devi (mother of the deceased), P.W. 2 Bachan Singh (informant and father of the deceased), P.W. 3 Subhadra Devi (an acquaintee from the parental side of the deceased), P.W. 4 Dr. Mayank Upadyay (who then Patwari Bhiri who initially investigated the crime), P.W. 6 Uttam Singh Chauhan (Nayab Tehsildar) and P.W. 7 Shivraj Lal, Supervisory- Kanoongo (who concluded the investigation). The oral and documentary evidence was put to the accused persons under Section 313 Cr.P.C. to which the accused persons, including appellant admitted that Rekha Devi (deceased) was married to Suryapal Singh on 24.05.1999 and after passing out Intermediate in good-second Division, she was to appear in B.A. examination from Agast Muni Degree College. However, regarding rest of the evidence relating to charge was alleged to be false. In the defence, D.W. 1 Suryapal Singh (husband of the deceased), D.W. 2 Gaj Pal Singh, D.W. 3 Dr. Krshana Lal, D.W. 4 Dr. Data Ram (who was giving treatment to the deceased before her death regarding some ailment) and D.W. 5. Santey Singh were examined. On behalf of the defence, several letters of the deceased (Exh. B-1 to Exh. B-14) were also filed. Exh. B-15 was a copy of the slip of the hospital, pertaining to the treatment of the deceased before her death.

7. First Information Report is highly delayed by more than four days for which there is no sufficient explanation. No where in the F.I.R., it is alleged if the deceased was harassed for non-fulfillment of demand of

dowry. Nor there is any evidence regarding the cruelty on account of dowry demand. The letters of the

deceased, filed on behalf of the defence also show that the deceased had cordial relations with her husband and there is no complaint in her letters, written by her against the accused persons appellant Dhanpal Singh or father-in-law, Barte Singh. The learned trial court rightly acquitted both the accused persons from the charges, punishable under Section 498-A, 304-B, I.P.C.

8. But it appears that learned trial court was misguided by the abrasions recorded in the ante-mortem injuries and presence of the appellant at the spot where the dead body was lying. As to the abrasions, it is possible that since the rope by which the deceased was hanging was cut as such while falling the abrasions might have been caused by friction over the earth. Possibility of such abrasions as mentioned above can be caused while climbing on a tree cannot be ruled out. As to the presence of appellant near dead body, it appears from the record (inquest report) that appellant was sent by his father (Barte Singh) in search of the deceased who had not retuned to home even after within a usual period. As such he naturally detected the dead body after search, and informed others. Otherwise also even if these two circumstances are taken against the appellant, these by itself are not sufficient at all to prove the charge of murder. Learned Sessions Judge has acquitted the co-accused Barte Singh from all the charges but convicted appellant Dhanpal Singh, brother-in-law of the deceased, on the same evidence under Section 302 I.P.C. which cannot be upheld.

9. There is no eye-witness who has seen appellant committing murder of Rekha Devi (deceased). From the evidence on record, particularly inquest report (Exh. A-

1), it appears that it was the accused Barte Singh who informed the Nayab Tehsildar about the fact that when deceased did not return from jungle, the appellant Dhanpal Singh searched for her and found her hanging in the jungle. The post-mortem examination report (Exh. A-3) also corroborates the fact that the deceased died of asphyxia. The post-mortem examination further makes it clear that there was a ligature mark of 43cm x 1cm at larynx of the deceased which also corroborates that deceased died of hanging. Learned Sessions Judge, Chamoli, has believed that appellant Dhanpal Singh after making attempt of commit rape on the deceased, murdered her by throttling. However, on perusal of evidence, we see little on the record which establishes that attempt to commit rape on the deceased was made or she was murdered by the appellant. Learned Sessions Judge has come to the conclusion on the basis of presumptions and surmises that the appellant made attempts to commit rape and thereafter committed murder of the deceased.

10. P.W. 1 Sampatti Devi has not whispered even a single word if the appellant, brother-in-law of the deceased (Jeth) had committed any such offence as found by the learned trial court. So is the case, with the evidence adduced by P.W. 2 Bachan Singh, father of the deceased. What both of these witnesses have stated is that their persons did not like. P.W. 3 Subhadra Devi has also corroborated the fact that the deceased wanted to study further to which her in-laws were not agreeable. P.W. 4 Mayank Upadhyay has proved the post-mortem report (Exh. A-3). Though he has observed that the

deceased has died of strangulation but the ligature mark mentioned by him in the post-mortem report does not corroborate throttling. However it cannot be ruled out the fact that the deceased might have died by committing suicide by hanging. The prosecution has concealed the report dated 05.04.2000 from the court which the accused Barte Singh submitted to Nayab Tehsildar, informing about the un-natural death of the deceased.

11. Unless and until a charge is proved beyond all reasonable doubt against the accused, he cannot be convicted of the charge. From the evidence on record, it is not proved that appellant has committed murder of Rekha Devi (deceased). Suspicion how-so-ever strong, cannot be a ground to convict an accused. Learned trial court, instead of reading the evidence on record, has presumed that generally in the hills this kind of crime are committed by the men against women.

12. Since the charge does not stand proved from the evidence on record against the appellant, we have no hesitation in holding that the appellant is wrongly convicted under Section 302 I.P.C. He is entitled to acquittal. In view of the above discussions and evidence on record, we are of the opinion that the appeal deserves to be allowed and the conviction and sentence awarded by the learned trial court is set aside. The appellant shall be released forthwith if not wanted in connection with any other crime.

(Prafulla C. Pant, J.) **(Irshad Hussain, J.)**

Dt: 13th May, 2005
Sweta